No. 845 17

In the Supreme Court of the United States

OCTOBER TERM, 1943

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, SEATRAIN LINES, INC., ET AL., APPELLANTS

v.

THE PENNSYLVANIA RAILROAD COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

RETURN TO RULE TO SHOW CAUSE

INDEX

CITATIONS

585078—44——1

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 845

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, SEATRAIN LINES, INC., ET AL., APPELLANTS

v.

THE PENNSYLVANIA RAILROAD COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

RETURN TO RULE TO SHOW CAUSE

This return is filed pursuant to the Court's order of April 24, 1944, which provides:

> It is ordered by this Court that the parties herein show cause on briefs, returnable May 1, 1944, accompanied by supporting affidavits if so desired, why the cause should not be dismissed as moot. Reply briefs and affidavits may be filed not later than 12 noon, May 5, 1944.

The facts are more fully stated in appellants' jurisdictional statement, and a description of the

operations of Seatrain Lines, Inc., hereinafter called Seatrain, is contained in *Interstate Commerce Commission* v. *Hoboken R. Co.*, 320 U. S. 368, decided this Term.

Appellants herein appeal from the holding of the lower court that although the provisions of the Interstate Commerce Act confer upon the Commission authority to require railroads to permit the interchange of their cars with Seatrain's vessels in the performance of through transportation in interstate commerce, and that the Commission is not deprived of such authority by reason of the fact that Seatrain is a water carrier, nevertheless such authority does not exist when the vessels of Seatrain, in transporting freight from one point to another point in the United States, pass outside the territorial waters of the United States, or call at Havana, Cuba, a foreign port. In a supplemental opinion, dated December 8, 1943, the lower court held that the $1.00 per day rate prescribed by the Commission for rail carriers generally provided reasonable compensation to the railroad appellees for the use of their cars while in the actual possession of Seatrain. From this latter holding, as well as from the decision that the fact that Seatrain is a water carrier does not deprive the Commission of authority to require railroads to permit the interchange of their cars with Seatrain, appellees have taken a cross appeal, which is No. 846, this Term.

On the question of whether the case is moot, there is no disagreement among the parties that Seatrain's vessels are now under requisition by the Government and that since early in 1942 Seatrain service has been discontinued. This is shown in the appended affidavit of Joseph Hodgson, Vice President of Seatrain, from which it also appears that Seatrain's discontinuance or suspension of operations is only temporary and that, upon the return of its boats, Seatrain will resume operations. It is clear from the affidavit that Seatrain has not permanently abandoned operations. The affidavit further shows that Seatrain's tariffs have not been canceled. Tariffs publishing joint through rates over the through routes formed by the Seatrain and the railroads remain on file with the Commission and in effect. The tariffs, however, give notice of the "temporary suspensions" of service of Seatrain and other coastwise steamship lines. For example, Agent Curlett's Tariff I. C. C. No. A–732, publishing joint, proportional and rail-water-rail class rates on behalf of a large number of rail and water carriers, including Seatrain, from New England and other eastern states to points in Louisiana, Texas, and other southwestern states, contains a provision, in Supplement No. 15, effective April 16, 1942, that "Due to interruptions of service over which the carriers have had no control, steamship services formerly used in the transportation of freight within the scope of this

tariff have been temporarily suspended to the extent indicated below * * *." This is followed by the statement that all coastwise service of Seatrain has been "temporarily suspended," but that "if and when ships and space are available, cargo will be accepted when covered by permit issued by the individual steamship lines."[1]

[1] The notice of temporary suspension referred to reads as follows:

"PARTIAL TEMPORARY SUSPENSION OF SERVICE OF ISSUING AND PARTICIPATING STEAMSHIP LINES

"Due to interruptions of service over which the carriers have had no control, steamship services formerly used in the transportation of freight within the scope of this tariff have been temporarily suspended to the extent indicated below:

"The Bull Steamship Line—All coastwise service temporarily suspended.

"Pan-Atlantic Steamship Corporation—All service within the scope of this tariff temporarily suspended.

"Seatrain Lines, Inc.—All coastwise service temporarily suspended.

"Southern Steamship Company—Northbound service from Houston, Texas, to Philadelphia, Pa., temporarily suspended.

"Therefore, shipments will not be accepted until further notice, either direct or from connecting carriers, for transportation over the routes via which service has been temporarily suspended; except, that if and when ships and space are available, cargo will be accepted when covered by permit issued by the individual steamship lines.

"Applications for permits must specify the kind and quantity of cargo, point of origin and destination, and ports of loading and discharge."

Supplement No. 16 to the tariff shows that all coastwise service of the Southern Steamship Company was subsequently temporarily suspended effective May 1, 1942.

The Commission's orders, both with respect to the interchange of cars between the railroads and Seatrain and also with respect to the maintenance of through routes and joint through rates, are in effect and outstanding.

The question whether this case is moot seems to turn upon the probability of resumption of operations by Seatrain. In *Interstate Commerce Commission* v. *Hoboken R. Co.*, 320 U. S. 368, in considering the suggestion that that case might have become moot because Seatrain's vessels are in Government service and Seatrain's service has been discontinued, the Court said (320 U. S. at 376):

> We may assume that the resumption of the service is so uncertain as to render it conjectural whether the Commission's present determination will be given any future operation. * * *

The Court did not find it necessary, however, to determine the fact concerning Seatrain's resumption, because, even though it were established that Seatrain would not resume service, the *Hoboken R. Co.* case would not be wholly moot, since the Commission's determination of reasonable divisions was "decisive of appellee's request for adjustment of the divisions of joint rates prescribed by the Commission which have been collected

since the beginning of the present proceeding" (*ibid.*).[2]

It is submitted that the facts now at hand, as portrayed in the attached affidavit, are sufficient to justify the conclusion that this case is not moot and to distinguish it from *United States* v. *Hamburg-American Co.*, 239 U. S. 466. There a suit was brought to enjoin an agreement of certain trans-Atlantic steamship lines which fixed quotas of steerage passengers for each line and regulated the rates for their trans-Atlantic passage, which agreement was alleged to constitute an illegal combination in violation of the Sherman Antitrust Act. This Court refused to pass upon the questions at issue regarding the legality of the agreement "because of their absolute want of present

---

[2] In this connection, the Court stated (*ibid.*):

"While the present record does not disclose the full extent to which joint rates, divisions of which are here sought, were prescribed by the Commission, it does appear that the Commission has in prior proceedings prescribed joint rail-water-rail rates between eastern trunk line and New England territories and southwestern territory applicable over Seatrain lines, to which Hoboken, Seatrain, and most if not all of the trunk lines which are appellants here are parties. *Seatrain Lines* v. *Akron, C. & Y. Ry. Co.*, 226 I. C. C. 7, 243 I. C. C. 199. As to them decision of this case controls the division of rates for the period since appellee's complaint was filed with the Commission. To that extent at least the case is not moot."

See also *United States* v. *Rock Royal Co-Op.*, 307 U. S. 533, 555–556, and *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 514–516, in which cases a similar principle was applied.

actuality, that is, because of their now moot character as an inevitable legal consequence springing from the European war which is now flagrant * * *" (239 U. S. at 475).[5] Concerning the suggestion that, in view of the character of the questions presented and the possibility or probability that on the cessation of war the parties would resume or recreate their asserted illegal combination, the controversy should be decided in order that by operation of the rule to be established any attempt at renewal of or creation of the combination in the future would be rendered impossible, the Court said (239 U. S. at 475):

> But this merely upon a prophecy as to future conditions invokes the exercise of judicial

[5] The Court distinguished *United States* v. *Trans-Missouri Freight Ass'n*, 166 U. S. 290 and *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, on the ground that in the *Trans-Missouri* case a combination between railroads charged to be illegal was dissolved by consent and it was held that in view of the continued operation of the railroads and the relations between them their mere consent did not relieve them of the duty to pass upon the pending charge of illegality under the statute of their previous conduct, since by the mere violation of the parties the combination could come into existence at any moment; and that, leaving aside some immaterial differences, in terms the ruling in the *Southern Pacific* case was based upon the decision in the *Trans-Missouri* case. The Court said, "Here on the contrary the business in which the parties to the combination were engaged has by force of events beyond their control ceased and by the same power any continued relation concerning it between them has become unlawful and impossible" (239 U. S. at 477).

> power not to decide an existing controversy, but to establish a rule for controlling predicted future conduct, contrary to the elementary principle which was thus stated in *California* v. *San Pablo & Tulare R. R.*, 149 U. S. 308, 314 * * *.

Although the *Hamburg-American* opinion does not expressly so state, the holding may well have been influenced by the fact that the agreement in question was about to expire. The opinion states (239 U. S. at 468) that the principal agreement was made in 1908 to last until February 28, 1911, and that on December 3, 1910, a month before the suit was filed, it was renewed for a period of five years. The agreement was thus to expire February 28, 1916, a short time after the decision which was rendered January 10, 1916, and there is nothing in the opinion to indicate that it had been or would be renewed.

United States v. *American Asiatic S. S. Co.*, 242 U. S. 537, is similar to the *Hamburg-American* case. The following quotation indicates that the holding that the case was moot was upon the ground that the agreements had been dissolved (242 U. S. at 538):

> At the time this action was taken by the court below, as the result of the European War, the assailed agreements had been dissolved and the questions raised by the bills were therefore purely moot, as directly decided to be the case as to a similar situa-

tion in *United States* v. *Hamburg-American Co.*, 239 U. S. 466.

The *Hamburg-American* and *American Asiatic* decisions appear to be in consonance with many others of this Court holding suits in equity to be moot where the act sought to be enjoined had, after the institution of the suit, been accomplished, as in *Mills* v. *Green*, 159 U. S. 651, or where a statute was passed pending appeal or some other happening supervened which destroyed the issues or rendered effective relief by a court impossible, as in *Berry* v. *Davis*, 242 U. S. 468; *Ford Motor Co.* v. *Labor Board*, 305 U. S. 364, 375; *United States* v. *Alaska S. S. Co.*, 253 U. S. 113, *Commercial Cable Co.* v. *Burleson*, 250 U. S. 360; *Norwegian Co.* v. *Tariff Commission*, 274 U. S. 106, *Standard Oil Co.* v. *United States*, 283 U. S. 163, 182; *Heitmuller* v. *Stokes*, 256 U. S. 359; *St. Pierre* v. *United States*, 319 U. S. 41; *Ohio* v. *United States*, 292 U. S. 498, 499. Compare *Duke Power Co.* v. *Greenwood Co.*, 299 U. S. 259, 267.

In *United States* v. *Alaska S. S. Co.*, 253 U. S. 113, it was held that the case, involving the validity of an order of the Interstate Commerce Commission prescribing bills of lading, had been rendered moot by the subsequent passage of an amendment to the Interstate Commerce Act. The Court remarked (253 U. S. at 116) that "Where by an act of the parties, or a subsequent law, *the*

existing controversy has come to an end, the case becomes moot and should be treated accordingly." [Italics supplied.]

In the case at bar it cannot be said with certainty that the existing controversy has come to an end. The suspension of Seatrain's operations is only temporary; there is nothing to indicate that Seatrain has permanently ceased operations. It holds patents which facilitate the operations of its unique vessels (see 195 I. C. C. 215, 217), designed to transport freight in railroad cars without break of bulk. From a small beginning, its business has grown and its service has been extended and the Commission has found that its service is in the public interest (206 I. C. C. 328, 344). As the appended affidavit indicates, there appears to be no ground to suppose that it will fail to resume operations when its boats are released by the Government.

In the *Hamburg-American* case (239 U. S. 466), it seems to have been taken for granted that the trans-Atlantic steamship lines involved would resume operations after the end of the war, and the case was held moot because the Court could not find that the lines would again enter into a similar agreement. Here, since there is nothing to indicate that Seatrain has abandoned its business, and since it appears that it has merely suspended operations because of the requisitioning of its boats for an indefinite period for use by the Government in conducting

the war, it may safely be taken for granted that it will resume operations (see Appendix, *infra*, p. 20) when it is in a position to do so. In view of these facts, and the fact that the Commission's order is a continuing one, it is thought that the existing controversy has not come to an end.

In holding, in *Federal Trade Commission* v. *Goodyear Co.*, 304 U. S. 257, that the controversy was not moot, the Court gave weight to the fact that the order of the Trade Commission involved was a continuing order, as is the order of the Interstate Commerce Commission here in question. In this connection, the Court said (304 U. S. at 260):

> Discontinuance of the practice which the Commission found to constitute a violation of the Act did not render the controversy moot. *United States* v. *Trans-Missouri Freight Assn.*, 166 U. S. 290, 309, 310; *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 452; *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 514–516; *National Labor Relations Board* v. *Pennsylania Greyhound Lines*, 303 U. S. 261; *Guarantee Veterinary Co.* v. *Federal Trade Commission*, 285 F. 853, 859, 860; *Chamber of Commerce* v. *Federal Trade Commission*, 13 F. 2d 673, 686, 687. The Commission, reciting its findings and the conclusion that respondent had violated the Act, required respondent to cease and desist from the particular discriminations which

> the order described. That is a continuing order. Its efficacy, if valid, was not affected by the subsequent passage or the provisions of the amendatory Act. As a continuing order, the Commission may take proceedings for its enforcement if it is disobeyed. * * *

The present case seems also to be within the principle of *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 514–516, involving the validity of an order of the Commission which, when the case reached this Court, had expired by its terms. The contention that, because by operation of law the Commission's order had spent its force, the question for decision was moot, was overruled. The Court adverted (219 U. S. at 514–515) to its frequent previous holdings that it would "only decide actual controversies, and if, pending an appeal, something occurs without any fault of the defendant which renders it impossible, if our decision should be in favor of the plaintiff, to grant him effectual relief, the appeal will be dismissed." "But," the Court said (*ibid.*), "in those cases the acts sought to be enjoined had been *completely executed*, and there was nothing that the judgment of the court, if the suits had been entertained, could have affected." [Italics supplied].[1]

[1] It was held that the case came within the rule announced in *United States* v. *Trans-Missouri Freight Ass'n*, 166 U. S. 290, 308, and *Bois City Irr. & Land Co.* v. *Clark*, 131 Fed. 415 (C. C. A. 9).

The *Southern Pacific Terminal Co.* decision was based upon the further consideration that the Commission's order involved might "to some extent (the exact extent it is unnecessary to define) be the basis of further proceedings." From the appended affidavit, it appears that the order of the Commission here involved may, similarly, be the basis of further proceedings. "But there is a broader consideration.", the Court said. "The questions involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar) and their consideration ought not to be, as they might be, defeated, by short term orders, capable of repetition, yet evading review * * *." (219 U. S. at 515.)

At the time of the *Southern Pacific Terminal Co.* decision, the Commission's authority to make orders for the future was limited to a period of two years. Since then, the Act has been amended to authorize the Commission to make its orders operative for an indefinite period.[1] The order

[1] Section 15 (2) of Part I of the Interstate Commerce Act provides:

"Except as otherwise provided in this part, all orders of the Commission, other than orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction" (49 U. S. C. 15 (2)).

here involved is not limited in time, but applies broadly for the future or until suspended, or modified or set aside by the Commission. Though enjoined by the court below, it has not been suspended or set aside by the Commission, and, if sustained by this Court, will undoubtedly be in effect upon the resumption of operations by Seatrain.

In *Leonard & Leonard* v. *Earle*, 279 U. S. 392, appellants, oyster packers, attacked as unconstitutional a Maryland statute which required packers to pay a license fee and to turn over to the State at least ten percent of the shells from the oysters shucked in their establishments. It appears from the opinion that there was some doubt whether appellants would continue in business as oyster packers. Inasmuch as they could complain only of a grievance of their own (*Interstate Commerce Commission* v. *Chicago, R. I. & P. Ry.*, 218 U. S. 88, 109), it seems clear that if they discontinued the business, the case would be moot. In holding the case not moot, the Court said (279 U. S. at 398):

> Considering the nature of the controversy and the agreement between the parties touching appellants' purpose to continue in the packing business, it can not be said that the cause has become moot. *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 307, 308; *Southern Pacific Company* v. *Interstate Commerce Commission*, 219 U. S. 433, 452;

Southern Pacific Terminal Company v. *Interstate Commerce Commission*, 219 U. S. 498, 514, 516; *McGrain* v. *Daugherty*, 273 U. S. 135, 182.

A question whether the controversy had become moot arose in *McGrain* v. *Daugherty*, 273 U. S. 135, because the Senate select committee which had issued the subpoena had ceased to exist, owing to the expiration of the 68th Congress which had ordered the investigation. If the committee were not reappointed nor a new committee appointed by the succeeding Congress, there would be no occasion for insisting upon the attendance of the witness. It was not absolutely certain that the new Congress would continue the investigation. To this extent, the case seems analagous to that at bar. Following the principle of the *Southern Pacific Terminal Co.* case (219 U. S. 498), and holding the case not moot, the Court said (273 U. S. at 180–182):

> Another question has arisen which should be noticed. It is whether the case has become moot. The investigation was ordered and the committee appointed during the Sixty-eighth Congress. That congress expired March 4, 1925. The resolution ordering the investigation in terms limited the committee's authority to the period of the Sixty-eighth Congress; but this apparently was changed by a later and amendatory resolution authorizing the committee to sit at such times and places as it might deem advisable or necessary. * * *

> * * * So far as we are advised the select committee having this investigation in charge has neither made a final report nor been discharged; nor has it been continued by an affirmative order. Apparently its activities have been suspended pending the decision of this case. But, be this as it may, it is certain that the committee may be continued or revived now by motion to that effect, and, if continued or revived, will have all its original powers. This being so, and the Senate being a continuing body, the case cannot be said to have become moot in the ordinary sense. The situation is measurably like that in *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 514–516 * * *. Our judgment may yet be carried into effect and the investigation proceeded with from the point at which it apparently was interrupted by reason of the *habeas corpus* proceedings. In these circumstances we think a judgment should be rendered as was done in the case cited.

The questions involved in the Commission's order here challenged are of course, as previously stated, continuing, and it seems that their consideration ought not to be defeated by the suspension, which appears to be only temporary, of Seatrain's operations, caused by exigencies of war beyond its control.

If, however, the Court holds that the case is moot, it is believed that the rule, applied in *United States* v. *Anchor Coal Co.*, 279 U. S. 812,

and cases cited, should be followed, namely, the reversal of the decision of the lower court annulling the Commission's order, with directions that the petition be dismissed as presenting no justiciable controversy. Otherwise, in the event Seatrain's vessels should be returned to it in the immediate future or should the Government cause them to be operated in their former services, which, as indicated by the appended affidavit of Seatrain, is possible, the parties would be confronted with a decree enjoining the Commission's order on grounds which have not been considered by this Court.[6]

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

DANIEL W. KNOWLTON,
Chief Counsel,

J. STANLEY PAYNE,
E. M. REIDY,
Assistant Chief Counsel,
Interstate Commerce Commission.

PARKER McCOLLESTER,
For Seatrain Lines, Inc.

H. H. LARIMORE,
For New Orleans & Lower Coast R. R.

MAY 1, 1944.

---

[6] The substantiality of the questions presented by the appeal are discussed in our jurisdictional statement at pp. 13–14.

APPENDIX

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1943.

No. 845

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, SEATRAIN LINES, INC., ET AL., APPELLANTS

v.

THE PENNSYLVANIA RAILROAD COMPANY, ET AL., APPELLEES

Appeal From the District Court of the United States for the District of New Jersey

Affidavit in Support of Return to Rule to Show Cause

STATE OF NEW YORK,
County of New York, ss:

Joseph Hodgson, being duly sworn, deposes and says:

1. I am Vice-President of Seatrain Lines, Inc. and am familiar with its business.

2. At various dates in 1941 and 1942 the United States Government through the War Shipping Administration requisitioned the use of the several vessels owned by Seatrain and diverted them

from their regular services in which they operated between the port of New York and the port of New Orleans to other services for which they were then needed in the prosecution of the war and in which, so far as deponent is informed, they are still employed.

3. With the requisitioning of its vessels, Seatrain on or about April 11, 1942 suspended its services until such time as its vessels should be returned or it should obtain other ships. However, Seatrain did not cancel its tariffs on file with the Commission naming its rates and defining the terms and conditions of its service, but under special permission from the Interstate Commerce Commission published a notice that its services were temporarily suspended subject to restoration on short notice. Seatrain has, indeed, from time to time filed supplements to its tariffs or concurred in supplements to tariffs of others publishing joint through rates via its route changing its rates to make them conform to general rate changes or established rate relationships, as it would do if its ships were in actual operation, in order that its rates and tariffs will be in order at any time for the resumption of its service.

4. Among the rates published for transportation via its line are joint through rates prescribed by the Interstate Commerce Commission by its order in its Docket No. 25727, which order is now in effect and whose continuing effect requires the maintenance of through routes for through transportation via Seatrain's line and prescribes the relationship of the through rates for such transportation to other rates.

5. Seatrain has continuously maintained its executive, traffic and operating organizations, looking to the resumption of its service.

6. Seatrain has no knowledge when its own ships may be returned to it or when other vessels may become available to it, but it is informed that since the Government has its vessels under requisition on a use or charter basis only which may be terminated at any time upon notice, one or more of its vessels may be returned to it at any time at the pleasure of the Government.

7. With its tariffs on file with the Commission Seatrain, pursuant thereto, will be obligated to perform its transportation service whenever it shall have ships for the purpose, and in the performance of such transportation the question of the obligation of appellee railroads to permit the interchange of their cars with Seatrain and the compensation to be paid to them therefor by Seatrain will become of great importance.

8. It is Seatrain's present intention to resume its service as soon as vessels are available to it for the purpose and conditions permit.

9. Moreover, the War Shipping Administration, without terminating the requisition charters and redelivering Seatrain's vessels to it, may at any time direct that one or more of these vessels be operated for the Government's account in their regular routes in the transportation of materials essential to the prosecution of the war. In that event, the question whether appellee railroads may refuse to permit the interchange of their cars with a water carrier and the compensation to which they are entitled for the use of their cars

will, as dependent believes, be of concern to the Government. This actually proved to be the situation with regard to operations between the United States and Cuba, where Seatrain formerly operated, when the Government, having requisitioned one of Seatrain's vessels, caused it to be operated for the Government's account between the United States and Cuba, retaining an affiliated company of Seatrain as its agent for the purpose.

10. Furthermore, this appellant is defendant in two suits pending in the United States District Court for the Southern District of New York, Civil 6–326 and 6–414, brought by the Pennsylvania Railroad Company, one of the appellants in No. 846, against Hoboken Manufacturers Railroad and Seatrain Lines, Inc. to recover compensation for the use or damages for the alleged conversion of cars of the Pennsylvania Railroad delivered by the Hoboken to the vessels of Seatrain. One of the issues in these suits is whether the so-called "Car Service Rule", involved in the present appeal, which rule purports to authorize the Pennsylvania Railroad to withhold its consent to the interchange of its cars with Seatrain as a water carrier in the performance of through transportation is a just, reasonable and lawful car service rule; and another issue is what will constitute a reasonable per diem charge to be paid by this appellant and Hoboken for the use of such cars when in their possession. Since these are administrative questions, as to which it is believed a determination of the Interstate Commerce Commission must first be had, these suits,

pursuant to orders of the court or by stipulation, have been adjourned from time to time or held on the suspense calendar of the court pending a determination of these administrative questions by the Interstate Commerce Commission in the proceeding involved in this action and thereafter pending final determination as to the validity of the Commission's order. If the present appeal is dismissed on the ground that the case has become moot, deponent is informed and believes that it will be necessary to present these administrative questions to the Commission in another proceeding, which will involve duplication of hearings and testimony and which may again invite judicial review of the Commission's determination before the New York District Court can proceed to a final decision in these two pending suits.

11. Seatrain Lines, Inc. owns all of the stock, except directors' qualifying shares, in Hoboken Manufacturers Railroad Company. In large part because of the loss of revenue to the Hoboken Manufacturers Railroad resulting from the temporary suspension of service by Seatrain, the Hoboken Manufacturers Railroad Company was compelled to file a petition for reorganization under the provisions of Section 77 of the Bankruptcy Act. This petition was allowed by order of the United States District Court for the District of New Jersey on July 26, 1943, and thereafter Forrest S. Smith was appointed Trustee and on or about November 12, 1943 qualified and entered into possession of the property of the railroad. Under the provisions of Section 77 of the Bankruptcy Act, the debtor corporation, Ho-

boken, of which Seatrain is the stockholder, is required to prepare and present within six months of the order allowing the petition for reorganization or within such further time as the Court may permit a plan of reorganization of the debtor railroad. With a large part of the Hoboken's revenues depending upon the handling of through traffic interchanged with Seatrain, and dependent in turn upon its right to interchange with the vessels of Seatrain cars owned by appellee railroads, it will be difficult, if not impossible, to prepare a plan of reorganization until a final determination of these questions is reached.

12. For the foregoing reasons, a dismissal of this case by the court, without deciding the issues raised by the appeals would seriously and adversely affect the interests of Seatrain both with regard to its own operations and as stockholder of Hoboken Manufacturers Railroad Company, would cause delay in the determination of pending proceedings and would make it difficult for Seatrain to make plans and arrangements for the resumption of its services.

JOSEPH HODGSON.

Signed and sworn to before me this 28th day of April 1944.

RAYMOND J. MARTIN,
Notary Public.

Kings County Clk's No. 57, Reg. No. 67-M-6; Bronx County Clk's No. 8, Reg. No. 18-M-6; Queens County Clk's No. 79, Reg. No. 28-M-6; N. Y. County Clk's No. 202, Reg. 125-M-6; Term expires March 30, 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1944